IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY & INTESTATE JURISDICTION

CHAMBER SUMMONS NO. 1068 OF 2003

IN

PETITION NO.816 OF 2001

Smt.Sakinabai Hasanali (since deceased)
Zoeb Ali Hasan Ali ...Petitioner.

vs.

Smt.Zaitoon Taherali Nalwala. ...Caveator

Mr.R.A.Shaikh, for Petitioner.

Ms.A.R.Lambay i/b. M/s.Lambay & Co., for Caveator.

CORAM: D.K.DESHMUKH,J.

DATED: 22nd March, 2007.

P.C.:-

1. This chamber summons has been taken out by the Widow of the deceased in relation to whose estate letters of administration has been granted, for setting aside the order dated 17.7.2003 granting of letters of administration. The admitted facts are that the deceased in

relation to whom the letters of administration were sought, died on 16.8.2000. The petition for letters of administration was filed on 25.10.2000. The present applicant in this chamber summons was one of the heirs cited in that petition being widow of the deceased by name Smt.Zaitun T. Nalwala The citation was issued on 17.7.2002. Before the citation was served on the applicant, the petitioner Sakinabai died on 6.8.2002. The citation was served on the applicant-widow on 22.8.2002. By the date the citation was served on the applicant, as observed above, the petitioner was no more. Perusal of Rule 401 of the Original Side Rules shows that the notice for filing of the caveat is to be given by the Prothonotary and Senior Master of this Court to the petitioner or his Advocate on record. Therefore, really speaking, the date on which the citation was served, in Law no caveat could have been filed by the persons who have been cited, because the caveat is to be filed within 14 days of the service of the citation and admittedly within 14 days of the service of the citation the deceased petitioner was not substituted. Still the applicant filed a caveat on 27.8.2002 But did not file affidavit in support of the caveat because the petitioner was dead and the order for substitution was not passed. The order for substitution was passed ultimately in January,2003. It is an admitted position that after the order for substitution was made, fresh citation was not served. Really speaking the date on which the citation was served viz. 22.8.2002 no caveat could have been filed and

therefore, to enable the persons who are cited in the petition, in accordance with law, it was necessary for the substituted petitioner to issue a fresh citation on the persons who are cited in the petition including the applicant-widow. Therefore, the order of the Court granting letters of administration dated 17.7.2003 without serving fresh citation on the heirs after the substitution, is illegal and is therefore, liable to be set aside. As the date on which the caveat was filed viz. 27.8.2002, really speaking no caveat could have been filed in the absence of the petitioner or his advocate, there is no question of filing any affidavit in support of that caveat.

2. Taking overall view of the matter therefore, in my opinion, the following order would meet the ends of justice:-

The order dated 17.7.2003 passed in petition no.816 of 2001 is recalled. The petition no.816 of 2001 is restored. The petitioner to take steps to serve fresh citation on the persons who have been cited in the petition. Office to process the petition thereafter in accordance with law.